

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 592

Short Title: Debt Issuance Accountability Act. (Public)

Sponsors: Representatives R. Brown and Conrad (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Appropriations.

April 6, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE DEBT ISSUANCE ACCOUNTABILITY ACT.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Chapter 142 of the General Statutes is amended by adding a new
5 Article to read:

6 "Article 1A.

7 "Issuance Accountability.

8 "**§ 142-15.15. Findings.**

9 The General Assembly hereby finds as follows:

- 10 (1) From time to time, the General Assembly has authorized the State and State
11 entities to acquire or lease assets in a manner that can obligate the State to
12 make payments similar to the obligation of the State to make payments for
13 borrowed money.
- 14 (2) Some of these arrangements have been made pursuant to specific legislative
15 authorization of the General Assembly, such as the financing of assets
16 pursuant to the State Capital Facilities Finance Act, the State Energy
17 Conservation Act, and the State and Local Government Revenue Bond Act,
18 while other arrangements have been entered into pursuant to broader and
19 more general legislative authorization, such as general powers to lease
20 property.
- 21 (3) Depending upon the terms, some arrangements may be treated as similar to
22 obligating the State to make payments for borrowed money and, therefore,
23 have an impact on the State's credit ratings, future debt affordability, the
24 ability to address budgetary shortfalls, the ability to enforce its contract
25 rights regarding the quality, durability, and performance of the assets
26 acquired, management of federal income tax compliance requirements,
27 management of federal securities law compliance, and on other matters of
28 State finances.
- 29 (4) As a result of the foregoing, the General Assembly enacts this Article to set
30 forth limitations on the ability of State entities to enter into financing
31 arrangements that constitute State-supported financing arrangements in order
32 to assure that the General Assembly is involved in reviewing and authorizing
33 these transactions and that the transactions are properly managed by State
34 entities and officials.

35 "**§ 142-15.16. Definitions.**



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1 The following definitions apply in this Article:

2 (1) Financing arrangement. – An installment financing arrangement,
3 lease-purchase arrangement, arrangement under which funds are to be paid
4 in the future based upon the availability of an asset, or any similar
5 arrangement in the nature of a financing having a term, when including
6 renewal options, of greater than one year, in which a State entity agrees to
7 make payments to acquire or obtain a capital asset for a State entity. Any
8 arrangement that results in the identification of a portion of a lease payment,
9 installment payment, or similar scheduled payment as "interest" for purposes
10 of federal income taxation is a financing arrangement for purposes of this
11 Article; provided, however, that (i) a contractual provision that requires
12 interest charges for late or overdue payments shall not by itself convert a
13 construction or procurement contract into a financing arrangement and (ii) a
14 contractual provision in a construction or purchase contract in which a State
15 entity will withhold or retain from amounts otherwise payable under the
16 contract a retainage until completion of construction, the resolution or
17 adjudication of disputes under the contract, the satisfaction of contract
18 provisions requiring that the property constructed or acquired meets
19 specified performance or quality standards, or similar contractual provisions
20 designed to protect the interests of the State under the contract do not
21 convert an arrangement that otherwise does not constitute a financing
22 arrangement into a financing arrangement. The term does not include any of
23 the following:

24 a. A true operating lease.

25 b. Provisions in a construction or purchase contract in which payments
26 are to be made over an extended period of time in accordance with
27 the terms of the contract as construction is completed or assets are
28 delivered.

29 (2) State entity. – The State of North Carolina and every agency, authority,
30 institution, board, commission, bureau, council, department, division,
31 officer, or employee of the State. The term does not include counties,
32 municipal corporations, political subdivisions, local boards of education, or
33 other public bodies.

34 (3) State-supported financing arrangement. – Any financing arrangement that
35 requires payments that are payable, whether directly or indirectly and
36 whether or not subject to the appropriation of funds for payment, by
37 payments from the General Fund, the Highway Fund, the Highway Trust
38 Fund, or other funds and accounts of the State that are funded from the
39 general revenues and other taxes and fees of the State or State entities. The
40 term does not include a financing arrangement where bonds or other
41 obligations are issued or incurred to carry out a financing program
42 authorized by the General Assembly under which the bonds or other
43 obligations are payable from moneys derived from specified, limited, nontax
44 sources, such as (i) loan payments made by a non-State entity receiving the
45 benefit of financing by a State entity (including an "obligor" or
46 "participating institution" within the meaning of Chapter 159D of the
47 General Statutes, a "public agency" or a "nonprofit agency" within the
48 meaning of Chapter 131A of the General Statutes and similar entities); (ii)
49 revenues of a revenue-producing enterprise or activity (such as "revenues"
50 within the meaning of Part 4 and Part 16 of Chapter 116 of the General
51 Statutes and "obligated resources" within the meaning of Article 3 of

1 Chapter 116D of the General Statutes); and (iii) loan payments received,
2 loans owned, and other assets of a State entity that are pledged to secure
3 bonds under programs to finance that type of asset and the associated
4 activities (such as mortgage loans under Chapter 122A of the General
5 Statutes and student loans under Article 23 of Chapter 116 of the General
6 Statutes).

7 **"§ 142-15.17. No State-supported financing of certain assets without approval of the**
8 **General Assembly.**

9 No State entity shall enter into any State-supported financing arrangement with respect to
10 the acquisition of a capital asset having a value of five million dollars (\$5,000,000) or more
11 unless the General Assembly has enacted legislation expressly approving (i) the acquisition,
12 project, or undertaking to be financed and (ii) the use of the State-supported financing
13 arrangement. The legislation required by this section may be in the form of either an act that
14 refers to the specific asset or project and the manner of financing or an act that identifies a type
15 of asset or project and a maximum amount that may be financed or incurred for that type of
16 asset or project. Arrangements to finance transportation infrastructure under partnership
17 agreements entered into by the Department of Transportation pursuant to and in accordance
18 with G.S. 136-18(39) and G.S. 136-18(39a) satisfy the project and financing approval
19 requirements of this section."

20 **SECTION 2.** This act is effective when it becomes law and applies to financing
21 arrangements entered into on or after that date.